

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
May 5, 2009 Session

**HOPE DENTON v. JAMES G. HAGGARD**

**Appeal from the Circuit Court for Wayne County**  
**No. 4191 Stella L. Hargrove, Judge**

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**No. M2008-02000-COA-R3-CV - Filed May 20, 2009**

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Evidence of defendant's prior traffic violations was excluded by the trial court in an automobile accident case. Plaintiff appealed. We affirm due to plaintiff's failure to make an offer of proof.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Joseph Michael Dalton, Nashville, Tennessee, for the appellant, Hope Denton.

Michael Everett Spitzer, Hohenwald, Tennessee, for the appellee, James G. Haggard.

**OPINION**

This case arose out of an automobile accident that occurred on May 6, 2005. Plaintiff Hope Denton and Defendant James Haggard were both traveling east on Highway 64 in Wayne County. Denton's car was in front, Nelson Reeves was behind Denton driving a truck with a 32-foot trailer carrying a farm tractor, and Haggard's pickup truck was behind Reeves's truck. On a long, flat stretch of road, within a passing zone, Haggard moved into the westbound lane to pass Reeves. There was no oncoming westbound traffic. Unfortunately, Denton chose to make a left turn just as Haggard was drawing even with the door of Reeves's truck. Testimony conflicted as to the speed of the vehicles and whether Denton slowed down or activated her turn signal. Although Haggard attempted to avoid the accident by braking and veering left, he collided with Denton's car. Denton was injured and both vehicles were damaged. Denton sued Haggard for damages due to negligence.

A jury trial was held on November 13 and 14, 2007. The jury found both parties equally at fault. The case was, therefore, dismissed. Denton's motion for a new trial was denied and she initiated this appeal.

The sole issue raised by Denton is whether the trial court erred in disallowing the admission of Haggard's driving record into evidence to impeach his credibility. Haggard, Denton claims, testified in his deposition that he had three prior speeding violations when he actually received nine speeding tickets in the past eight years with seven convictions. The trial court ruled that, since speeding was not an issue in this case, the prejudicial effect outweighed the probative value.

We need not reach the merits of Denton's issue, however, because no offer of proof was made. *See* Tenn. R. Evid. 103(a)(2). "If the excluded evidence is a document or an exhibit, the item should be marked for identification and filed with the court at the time of the offer of proof." Neil P. Cohen et al., TENNESSEE LAW OF EVIDENCE § 1.03[5][d] (4th ed. 2008). Our review is "frustrated if the official record fails to contain the evidence which is the object of appellate scrutiny." *Id.* at § 1.03[6][e]. The party appealing the exclusion of evidence must have made an offer of proof to enable the appellate court to determine whether the trial court's exclusion of the evidence was reversible error. *Dossett v. City of Kingsport*, 258 S.W.3d 139, 145 (Tenn. Ct. App. 2007). When an offer of proof has not been made, appellate courts will not consider whether the evidence should have been excluded. *Id.* No document listing Haggard's driving violations is in the record nor is his deposition. Denton has provided this court with nothing to review; thus, the issue of the exclusion of the evidence is waived.

The judgment of the trial court is affirmed. Costs of appeal are assessed against the appellant, Hope Denton, for which execution may issue, if necessary.

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ANDY D. BENNETT, JUDGE